

## **EXHIBIT 17**

ARBITRATION BOARD CONVENED IN  
NEW YORK, NEW YORK

-----X

In the Matter of the Arbitration of

SECURITY INSURANCE COMPANY OF  
HARTFORD Itself and as Successor in Interest to  
THE FIRE AND CASUALTY INSURANCE  
COMPANY OF CONNECTICUT and THE  
CONNECTICUT INDEMNITY COMPANY,

Claimant,

-against-

COMMERCIAL RISK REINSURANCE  
COMPANY LIMITED (BERMUDA) and  
COMMERCIAL RISK RE-INSURANCE  
COMPANY (VERMONT),

Respondents.

(DIG)

-----X

**Panel:**

David Thirkill (Umpire)  
Theodor Dielmann  
Martin Haber

**INTERIM FINAL AWARD**

**Whereas** the parties to the above-referenced proceeding have conducted a hearing from March 5, 2007 through March 9, 2007 before the fully convened Panel; and

**Whereas** the fully convened Panel has deliberated and considered the documents, testimony, briefs and arguments set forth by both parties;

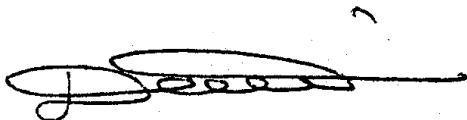
**The Panel (by a majority decision) hereby issues the following INTERIM FINAL AWARD:**

1. The 1999 Quota Share Reinsurance Agreement (effective July 1, 1999 through August 31, 1999) and the 2000 Quota Share Reinsurance Agreements (effective September 1, 2000 through March 1, 2001) that were the subject of this arbitration are in full force and effect;

2. Respondents are directed to pay Claimant the amount of \$20,754,990, which represents balances due under the 1999 and 2000 Reinsurance Agreements within 30 days of the date of the issuance of this Interim Final Award. Should Respondents fail to do so, Claimant shall be entitled to draw down the security posted by Respondents.
3. Respondents are further directed to pay Claimant interest in the amount of \$1,300,000 within thirty days of the date of the issuance of this Interim Final Award. Any amount not paid shall accrue interest at the rate of 10% per annum.
4. Upon satisfaction by Respondents of the full amounts due and owing under this Interim Final Award, the parties are directed to confer as to the release of security posted by Respondents;
5. All other claims for relief asserted by either party to this arbitration are denied; and
6. This Panel shall remain constituted until all parts of this Order have been fully performed.

Dated this 11th day of March, 2007

By the Panel:

A handwritten signature in black ink, appearing to read 'David Thirkill', with a long horizontal line extending to the right.

---

David Thirkill (Umpire)  
On Behalf of The Panel

## **EXHIBIT 18**

-----Original Message-----

From: theo <theo.dielmann@th-dielmann.com>

To: David Thirkill <coomac@comcast.net>; Haber Martin D  
<haberlaw@aol.com>; Lewner, Andrew S.; Jacobson, Michele L.; John  
Higgins <JHiggins@damato-lynch.com>

Sent: Tue Mar 20 12:13:45 2007

Subject: Re: SICR/CRP /DIG and NON-DIG Arbitrations

Dear Counsel & Co-panelists,

After in-depth deliberation I wish to withdraw as arbitrator from both  
the NON-DIG and DIG arbitrations (the Panel of the latter having  
remained constituted until all parts of the Order have been fully  
performed) Best regards, Theo Dielmann

## **EXHIBIT 19**

-----Original Message-----

From: Jacobson, Michele L.  
Sent: Tuesday, March 20, 2007 5:33 PM  
To: 'coomac@comcast.net'; JHiggins@damato-lynch.com; Lewner, Andrew S.  
Cc: haberlaw@aol.com  
Subject: RE: SICR/CRP /DIG and NON-DIG Arbitrations

Dear Mr. Thirkill and Mr. Haber:

Thank you for your email below.

Security Insurance Company of Hartford does not agree to a postponement of the hearing dates, and we have informed Mr. Higgins that we fully expect that those hearing dates will hold firm.

Respectfully,  
Michele Jacobson

-----Original Message-----

From: coomac@comcast.net [<mailto:coomac@comcast.net>]  
Sent: Tuesday, March 20, 2007 5:24 PM  
To: JHiggins@damato-lynch.com; Lewner, Andrew S.; Jacobson, Michele L.  
Cc: haberlaw@aol.com  
Subject: Re: SICR/CRP /DIG and NON-DIG Arbitrations

Dear Counsel

Mr. Haber and I note, with regret, the withdrawal of Mr. Dielmann as party appointed arbitrator for Commercial Risk.

We believe that Commercial Risk should appoint a replacement as soon as possible. Since the hearing is not scheduled to start for over three months, we do not see any need for postponement unless the parties mutually agree otherwise.

Thank you

David Thirkill  
Umpire

## **EXHIBIT 20**



-----Original Message-----

From: Higgins, John [<mailto:JHiggins@damato-lynch.com>]  
Sent: Tuesday, March 20, 2007 5:56 PM  
To: coomac@comcast.net; Lewner, Andrew S.; Jacobson, Michele L.  
Cc: haberlaw@aol.com  
Subject: RE: SICR/CRP /DIG and NON-DIG Arbitrations

Mr Thirkill,  
Thanks for this, which we have noted.  
Best,  
JPH

-----Original Message-----

From: coomac@comcast.net [<mailto:coomac@comcast.net>]  
Sent: Tuesday, March 20, 2007 5:24 PM  
To: Higgins, John; alewner@stroock.com; mjacobson@stroock.com  
Cc: haberlaw@aol.com  
Subject: Re: SICR/CRP /DIG and NON-DIG Arbitrations

Dear Counsel

Mr. Haber and I note, with regret, the withdrawal of Mr. Dielmann as party appointed arbitrator for Commercial Risk.

We believe that Commercial Risk should appoint a replacement as soon as possible. Since the hearing is not scheduled to start for over three months, we do not see any need for postponement unless the parties mutually agree otherwise.

Thank you

David Thirkill  
Umpire

## **EXHIBIT 21**

## STROOCK

March 20, 2007

**BY EMAIL**

Andrew S. Lewner  
Direct Dial 212-806-5820  
Direct Fax 212-806-7820  
Alcwnct@stroock.com

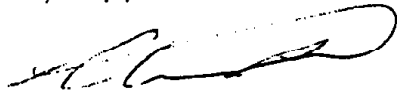
John P. Higgins, Esq.  
D'Amato & Lynch  
70 Pine Street  
New York, New York 10270-0110

Re: Arbitrations between Security Ins. Co. of Hartford, et. al. and Commercial Risk Reinsurance Company Limited (Bermuda) and Commercial Risk Re-Insurance Company (Vermont) (DIG and Non-DIG)

Dear John:

I write in relation to Mr. Dielmann's email of earlier today. In light of Mr. Dielmann's unprecedented early withdrawal, we must insist that you provide us the details of any information that you or your client have, or any conversations that either you or your client have had with Mr. Dielmann concerning his actions. If we do not receive this information by the close of business tomorrow, we will have no choice but to bring this issue to the Panel. Obviously, we remain fully committed to the previously agreed June 25 - 29, 2007 hearing dates, and fully expect that those hearing dates will hold firm.

Very truly yours,



Andrew S. Lewner

cc: Michele L. Jacobson

## **EXHIBIT 22**

## D'AMATO & LYNCH

GEORGE G. D'AMATO  
JAKE D. LYNCH (1999)  
ENNETH A. SAGAT  
JAKE D. LYNCH, JR.  
OBERT E. KUSHNER  
RICHARD F. RUSSELL  
ONALD H. ALENSTEIN  
ARRY J. ARNOLD, JR.  
OBERT W. LANG  
EAL M. GLAZER  
NDREW R. SIMMONDS  
JOHN P. HIGGINS  
THOMAS F. BREEN  
LFRED A. D'AGOSTINO, JR.  
WILLIAM P. LARSEN, III  
OBERT D. LANG  
AVID A. BUYAR  
ARY JO BARRY  
BARBARA R. SEYMOUR  
ARVEY BARRISON

WILLIAM C. BURTON  
CHARLES BRAMHAM  
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THOMAS W. HANLON  
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MICHAEL L. MANIRE  
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Direct Dial: (212) 909-2036  
E-Mail: [jhiggins@damato-lynch.com](mailto:jhiggins@damato-lynch.com)  
March 20, 2007

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CATHERINE L. CASAVANT  
ROY CAPLINGER  
ANNEMARIE J. MAZZONE  
EDWARD M. ROTH  
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MELEENA M. BOWERS

### COUNSEL

ROBERT M. MAKLA  
ALBERT B. LEWIS  
PETER J. THUMSER

VICTOR F. MUSTELIER  
ROBERT GILROY  
RICHARD G. MCGAHREN

### Via E-Mail

Mr. Andrew Lewner  
Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038-4982

Re: In the Matter of the Arbitrations between Commercial Risk Reinsurance Company Limited (Bermuda) and Commercial Risk Re-Insurance Company (Vermont) and Security Insurance Company of Hartford, The Fire and Casualty Insurance Company of Connecticut and The Connecticut Indemnity Company (DIG )  
Our Ref. No.: 812-72904

Dear Andrew:

We received yours of today concerning Mr Dielmann. There will be no need for you to wait until close of business tomorrow to take such steps as SICH may see fit to take. We will not be responding in any way to the request for information. We note your expectation and commitment to the non-DIG hearing dates.

Very truly yours,



cc: Ms. Michele L. Jacobson  
/lc

John P. Higgins

## **EXHIBIT 23**

## STROOCK

By E-Mail and Overnight Mail

March 27, 2007

Regan A. Shulman  
Direct Dial 212-806-6245  
Firm Fax 212-806-6006  
Rshulman@stroock.com

John P. Higgins, Esq.  
D'Amato & Lynch  
70 Pine Street  
New York, New York 10270-0110

Re: Arbitration between Security Ins. Co. of Hartford, et. al. and Commercial Risk  
Reinsurance Company Limited (Bermuda) and Commercial Risk Re-Insurance  
Company (Vermont) (Non-DIG)

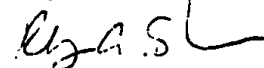
Dear John:

A week has passed since Mr. Dielmann withdrew as an arbitrator in the above-referenced arbitration without explanation. As we advised you in our correspondence of March 20, 2007, and you "noted" in your response of the same day, Claimant is committed to proceeding with the Non-DIG arbitration during the week of June 25th, as previously agreed by the parties. You may recall that the Non-DIG arbitration hearing was postponed for nearly four months from the originally scheduled March date as an accommodation to Mr. Dielmann.

To date, Commercial Risk Reinsurance Company Limited (Bermuda) and Commercial Risk Re-Insurance Company (Vermont) (collectively "Commercial Risk") have not appointed a replacement arbitrator who is available to serve on a panel during the week of June 25, 2007, nor have you advised us of Commercial Risk's intent to do so.

Please be advised that if we do not receive within ten (10) days, notice of appointment of a replacement arbitrator who satisfies all applicable requirements and is available for a hearing during the week of June 25, 2007, we will seek court appointment of a replacement arbitrator.

Very truly yours,



Regan A. Shulman

cc: André Lefebvre  
Dennis Haver, Esq.  
Michele L. Jacobson, Esq.

## **EXHIBIT 24**



-----Original Message-----

From: David Thirkill <coomac@comcast.net>  
To: Higgins, John <JHiggins@damato-lynch.com>  
CC: haberlaw@aol.com <haberlaw@aol.com>; Jacobson, Michele L.; Lewner, Andrew S.  
Sent: Sun Apr 01 11:57:07 2007  
Subject: Re: SICH/CRP /DIG and NON-DIG Arbitrations

Dear Mr Higgins

Thank you for your note of the 20th March responding to mine of the same date. Although there is still some time to go until the hearing, Mr Haber and I are of the opinion that the replacement for Mr. Dielmann should be made as soon as possible. You should, by now, have had the opportunity of discussing the matter with Commercial Risk. Would you kindly advise us by Wednesday of this week as to the replacement.

Thank you and regards

David Thirkill  
Umpire

On Mar 20, 2007, at 5:56 PM, Higgins, John wrote:

> Mr Thirkill,  
> Thanks for this, which we have noted.  
> Best,  
> JPH

> -----Original Message-----

> From: coomac@comcast.net [mailto:coomac@comcast.net]  
> Sent: Tuesday, March 20, 2007 5:24 PM  
> To: Higgins, John; alewner@stroock.com; mjacobson@stroock.com  
> Cc: haberlaw@aol.com  
> Subject: Re: SICH/CRP /DIG and NON-DIG Arbitrations

> Dear Counsel

> Mr. Haber and I note, with regret, the withdrawal of Mr. Dielmann as  
> party appointed arbitrator for Commercial Risk.

> We believe that Commercial Risk should appoint a replacement as soon  
> as possible. Since the hearing is not scheduled to start for over  
> three months, we do not see any need for postponement unless the  
> parties mutually agree otherwise.

> Thank you

> David Thirkill  
> Umpire

## **EXHIBIT 25**

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From: Higgins, John [mailto:JHiggins@damato-lynch.com]  
Sent: Wednesday, April 04, 2007 5:25 PM  
To: Jacobson, Michele L.  
Cc: Lewner, Andrew S.; coomac@comcast.net; haberlaw@aol.com;  
theo.dielmann@th-dielmann.com  
Subject: Non-DIG

Michele,  
I'm sorry to not having had a chance to respond today. We will have a  
letter in your hands tomorrow on an arbitrator for non-DIG.

Best,  
JPH

John P. Higgins  
D'Amato & Lynch  
70 Pine Street  
New York, New York 10270-0110  
Direct Dial: (212) 909-2036  
Main No: (212) 269-0927  
E-mail: JHiggins@damato-lynch.com

## **EXHIBIT 26**

## D'AMATO & LYNCH

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E-Mail: [jhiggins@damato-lynch.com](mailto:jhiggins@damato-lynch.com)

April 5, 2007

GEORGE G. D'AMATO  
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KENNETH A. SAGAT  
JAKE D. LYNCH, JR.  
ROBERT E. KUSHNER  
RICHARD F. RUSSELL  
RONALD H. ALLENSTEIN  
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RICHARD G. MCGAHREN

VIA E-MAIL - [MJacobson@stroock.com](mailto:MJacobson@stroock.com)

Ms. Michele L. Jacobson

Stroock & Stroock & Lavan LLP

180 Maiden Lane

New York, New York 10038-4982

Re: In the Matter of the Arbitrations between Commercial Risk Reinsurance Company Limited (Bermuda) and Commercial Risk Re-Insurance Company (Vermont) and Security Insurance Company of Hartford, The Fire and Casualty Insurance Company of Connecticut and The Connecticut Indemnity Company  
Our Ref. No.: 812-72904 (Non-DIG)

Dear Michelle:

Commercial Risk Reinsurance Company Limited and Commercial Risk Re-Insurance Company have appointed Peter Gentile as arbitrator for the non-DIG arbitration. We presume that Security Insurance Company of Hartford will appoint Martin Haber. If you will confirm that, we will ask Mr. Gentile to contact Mr. Haber to undertake the selection of a third arbitrator in accordance with the arbitration clauses in the treaties.

Ms. Michele L. Jacobson  
Page 2  
April 5, 2007

Please confirm Security's position with regard to the American Arbitration Association acting as default appointer as the treaties indicate. We will be glad to discuss the issue of affirming all of the proceedings and disclosure conducted thus far.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Higgins", with a stylized flourish at the end.

John P. Higgins

/lc

cc: Mr. Martin D. Haber  
Mr. David Thirkill  
Ms. Regan Shulman  
Mr. Andrew Lewner  
(via e-mail)

## **EXHIBIT 27**

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COMMERCIAL RISK REINSURANCE  
COMPANY LTD.,

Plaintiff,

v. 07 Civ. 2772 (VM)

SECURITY INSURANCE COMPANY OF  
HARTFORD,

Defendant.

April 9, 2007  
5:17 p.m.

Before:

HON. VICTOR MARRERO,  
District Judge

APPEARANCES

D'AMATO & LYNCH  
Attorneys for Plaintiff  
BY: JOHN P. HIGGINS  
EDWARD ROTH  
JOHN MUCCIFORI

STROOCK & STROOCK & LAVAN, L.L.P.  
Attorneys for Defendant  
BY: REGAN A. SHULMAN  
MICHELE L. JACOBSON

1 Court has a trial through the balance of this week and this is  
2 the only time that we could do on the short schedule that the  
3 parties indicated they have before the sky falls.

4 For the plaintiffs, either Mr. Higgins or Mr. Roth,  
5 who speaks?

6 MR. HIGGINS: I will, your Honor. It is Mr. Higgins.

7 THE COURT: All right.

8 MR. HIGGINS: Has the time limit been established? I  
9 shouldn't take too long.

10 THE COURT: Why don't you indicate what you think you  
11 need. Let me just indicate that we have received your papers,  
12 the original petition, the memoranda from both sides and have  
13 reviewed them, so at least we have submission familiarity with  
14 the basic issues. You need not go over, in any detail, matters  
15 that you already covered.

16 If there is something that you believe requires  
17 additional emphasis or that is not sufficiently covered in the  
18 material, perhaps you can concentrate on that.

19 MR. HIGGINS: Thank you, your Honor.

20 THE COURT: How much time do you think you need for  
21 that purpose?

22 MR. HIGGINS: No more than 10 minutes.

23 THE COURT: All right.

24 Now, Ms. Jacobson or Ms. Shulman, who speaks?

25 MS. JACOBSON: Ms. Jacobson.

1 (Case called)

2 THE COURT: This is a proceeding in the matter of  
3 Commercial Risk Reinsurance Company Limited, and others, vers  
4 Security Insurance Company of Hartford, docket number 07 Civil  
5 27. I was reading, perhaps this is a typo, but it says 07  
6 civil 2722. The appearance sheet that the parties have signed  
7 says that it is 07 civil 2772, so it is one or the other.

8 The plaintiff's submission in support of its motion is  
9 docketed as 07 civil 2772.

10 MR. ROTH: Your Honor, the order to show cause that  
11 your Honor signed has 2772, although it is in my handwriting I  
12 do believe that is the number that was assigned by the Court.

13 THE COURT: Be that as it may, whatever the number is,  
14 is simple to verify, but at least we don't have the parties  
15 wrong.

16 Now, the matter is here on the plaintiff's motion for  
17 a preliminary injunction. The underlying dispute arises from  
18 an arbitration proceeding in which an arbitrator issued an  
19 award and the defendants are seeking to draw down upon some  
20 related letter of credit in order to satisfy the arbitration  
21 award. The plaintiffs are seeking to prevent the defendants  
22 from drawing down on that letter of credit.

23 Why don't we just briefly go over the ground rules as  
24 to how much time we need for this argument. It is late in the  
25 day, as you know. We accommodated this request because the

1 THE COURT: Is 10 minutes sufficient?

2 MS. JACOBSON: I would say somewhere between 10 and  
3 15.

4 THE COURT: Why don't we then begin with plaintiffs  
5 having an initial 10 minutes.

6 MR. HIGGINS: Thank you, your Honor. I gather my  
7 appearance has been noted?

8 THE COURT: Yes. We have the notice of appearance  
9 that the parties have submitted and the court reporter has a  
10 copy of it, so that that will be entered as part of the  
11 transcript of this proceeding.

12 MR. HIGGINS: Thank you.

13 We would initially like to seek the Court's indulgence  
14 in modifying the papers to include an additional letter of  
15 credit which was located and disclosed by respondents here. It  
16 is letter of credit 91889855 of BNP Paribas in the amount of  
17 \$638,498.

18 We apologize for the confusion. Actually, there were  
19 at least five and perhaps more letters of credit issued around  
20 the same time and this one seemed to get lost in the shuffle.

21 Two letters of credit were delivered as collateral  
22 security in this arbitration to Stroock & Stroock & Lavan under  
23 the order of the arbitration panel as a provisional remedy.  
24 This is a very odd situation because we're faced now with a  
25 circumstance where we are seeking a provisional remedy to



5

7

1 protect the integrity of provisional remedy.

2 We didn't dispute the power of the arbitration panel  
3 below to order us to put up the collateral security, but we do  
4 dispute the power of the arbitration panel to allow the  
5 collateral security to be paid over to the petitioner beneath  
6 without first obtaining a confirmation of the award and then  
7 having it reduced to a judgment.

8 Here we have the opposite of what you would normally  
9 see, which is a plaintiff trying to protect the status quo by  
10 restraining a defendant from running off with the money, so to  
11 speak, whereas here we have placed the collateral up and what  
12 we are seeking to do is keep it there pending resolution of our  
13 motion and pending proceedings in this court to determine  
14 whether or not the plaintiff is entitled to the funds. And, if  
15 so, they'll be there. The security is going nowhere. And they  
16 can draw it down or we may otherwise pay it if need be. But we  
17 don't believe the arbitration panel has the authority to  
18 enforce its own award, as such.

19 So, as I said, this is a very unusual circumstance.  
20 We found no cases which are on these facts and none were cited  
21 on these facts by our opponents.

22 THE COURT: Mr. Higgins, a question that this issue  
23 raised when the Court read the papers in your submission.  
24 Under the fact session you state that it is your view that the  
25 parties agreed under the treaties to submit any difference of

1 satisfy a judgment. If it can be paid over, either before or  
2 after an award, then it loses its provisional character and it  
3 becomes a final relief as opposed to a provisional relief  
4 because it's payment of money --

5 THE COURT: Let me interrupt.

6 Could not parties by a separate agreement, such as  
7 letter of credit agreement, provide among themselves that the  
8 letter of credit could be drawn down as enforcement of an  
9 arbitration award, whether or not the arbitrators so order or  
10 whether or not it is within the jurisdiction?

11 Even if it were not within their jurisdiction, could  
12 not the parties agree that upon the award the prevailing party  
13 could draw down a letter?

14 MR. HIGGINS: Of course, your Honor. The parties  
15 could agree but here they haven't. There is no --

16 THE COURT: Is that a matter of dispute then? And I  
17 think that is what I gather is exactly what the defendants are  
18 disputing. If that's the case then on what basis can this  
19 Court grant preliminary injunctive relief?

20 MR. HIGGINS: I'm not exactly sure what the agreement  
21 that the respondents are alleging was made other than --

22 THE COURT: That's why we have a factual dispute.

23 MR. HIGGINS: Well, I mean if there is an allegation  
24 that there is an agreement of course we have a factual dispute  
25 because I'm not aware of any. The citation --

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1 dispute to arbitration but then you say arbitration clauses do  
2 not submit award enforcement in compliance to the jurisdiction  
3 of the arbitrators.

4 But you do acknowledge that you put up letters of  
5 credit for the purposes of supporting whatever award may or may  
6 not have come under the arbitration proceeding?

7 MR. HIGGINS: Yes, your Honor.

8 THE COURT: So, in that case, the question is whether  
9 the draw down or the letters of credit, whether or not it comes  
10 from the arbitrator comes from contractual agreement of the  
11 parties is binded in the treaties that are integrally connected  
12 with the arbitration proceeding.

13 MR. HIGGINS: Well, the underlying debt does, if there  
14 is an underlying debt. That comes from the underlying treaty  
15 and there is an agreement to arbitrate. And what we've  
16 assigned to the panel of arbitrators is the right and duty to  
17 decide the merits of the dispute. We haven't assigned any  
18 right of enforcement. And the cases are clear that arbitrators  
19 don't have the power to enforce their own awards. You have to  
20 go to the Court to do that. They couldn't issue a warrant.  
21 They couldn't ask a sheriff or a marshal to execute. And in  
22 this case the very nature of what the arbitrators awarded in  
23 the way of collateral is what the Courts have supported, which  
24 is a provisional remedy. The proviso of the provisional remedy  
25 is a judgment. It is so that the money will be there to

1 THE COURT: You are also counsel to the plaintiff?

2 MR. HIGGINS: Here we are counsel to the plaintiff,  
3 yes; but the defendant is alleging this agreement and they  
4 haven't identified -- they haven't identified what it is. So I  
5 suppose there is disagreement in that way.

6 But the point is that the arbitration clause itself  
7 doesn't come close to assigning that right to the arbitration  
8 panel. It says that judgment on an award can be entered in any  
9 Court of jurisdiction and that's exactly what we think they  
10 should attempt to do, is enter judgment on the award, get the  
11 thing confirmed, and if they have a right to do that, and then  
12 take advantage of the collateral that was required to put up.

13 What they attempt here is very analogous to a Court  
14 giving a provisional remedy and then paying over the money to  
15 one of the litigants before entering a judgment. It would be  
16 the same thing. And I'm sure that that wouldn't appeal to your  
17 Honor in terms of the way that it should happen.

18 Now, could two parties agree that anyone, the Court or  
19 anyone else has the power to do that? Of course. But that  
20 would be a very unusual agreement and I should think that that  
21 should be very specific and shouldn't be -- one shouldn't look  
22 for that agreement in a normal arbitration clause or in a  
23 normal reinsurance or contractual relationship.

24 As I said, the cases are clear, arbitrators don't have  
25 the power to enforce their own judgments.

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1 Now, in this case it is a compulsion. The award says  
2 pay within 30 days or lose the security. And they're the ones  
3 that put -- the panel ordered it put up as a provisional remedy  
4 and now the provision -- the judgment is being ignored.

5 So, that's what we have to say about that. I don't  
6 know whether it pays, really, to get in too much into the  
7 standards of irreparable harm and likelihood of success on the  
8 merits but we would say here --

9 THE COURT: Why don't we touch on the question of  
10 irreparable harm here, Mr. Higgins because that, too, is an  
11 important concern. To what extent is what you are concerned  
12 about really a question of dollars and cents?

13 MR. HIGGINS: Well, it is.

14 THE COURT: You put up money. They have your money.  
15 If they have wrongfully drawn down upon it and you prevail on  
16 the merits, you get it back, with interest. How is that  
17 irreparable harm?

18 MR. HIGGINS: Well, that, in itself, we would  
19 acknowledge isn't irreparable harm.

20 THE COURT: Then what is?

21 MR. HIGGINS: The abuse of the process itself.  
22 Because, as I said, if that can be done in this case that can  
23 be done in any case. You can order collateral security put up  
24 and then you can just willy nilly pay it over to the other  
25 side. There is nothing to stop you under this theory that the

1 just money. I think that the irreparable harm is in, as I  
2 said, it is an abuse of the process. It is a violation of the  
3 provisional nature of the security itself. It is converting it  
4 from provisional remedy to a non-provisional remedy.

5 Now, as your Honor pointed out, there is nothing to  
6 stop parties from altering those relationships but it hasn't  
7 been done in this case. Nothing that the respondent has  
8 pointed to has indicated that there was any intent of the  
9 parties, or even at the time of the panel to make this other  
10 than a provisional remedy. And we suggest that that's the  
11 irreparable harm here.

12 In terms of success on the merits, we have referred to  
13 a few very serious questions here which don't go to the normal  
14 thing you might see which is that the arbitrators made a  
15 mistake of law or mistake of fact. Here, none of our defenses  
16 really relate to that. The most important one here is that  
17 they refused evidence and that is standard under Section 10,  
18 paragraph 3, of the FAA, and that section refers to that as  
19 arbitrator misconduct.

20 Now, you know, the other side cited some cases but  
21 those cases are easily distinguishable. Here it was our only  
22 witness on these points and it was rebuttal. And the cases  
23 cited against the three witnesses, this was offered as the  
24 fourth and the party offering them would not so much as  
25 indicate what is being proffered for and the arbitrators just

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1 defense has put forward. There is no requirement that there be  
2 an arbitration award. I mean, there is in this case but there  
3 would be no requirement that there would be.

4 THE COURT: But you are positing a set of facts that  
5 are not what is before the Court now. It is not a question of  
6 willy nilly. It is a question of whether there is a sufficient  
7 basis for a draw down upon there being at least a colorable  
8 arbitration award that the parties have gone through, the  
9 process, and at least a colorable basis under the treaties  
10 agreement for the draw down to occur before a judgment is  
11 rendered confirming the award -- assuming that that is the  
12 basis upon which the defendants are claiming that they have a  
13 right to the draw down before the confirmation of the award.

14 MR. HIGGINS: Well, the second point we would  
15 certainly dispute: That there is a basis in the contract.  
16 Because we are dealing here only with the arbitration clause.

17 The subject of the arbitration was to enforce the  
18 contract and we had some defenses to the contract so that is in  
19 quasi-judicial proceedings in the arbitration and now it is in  
20 judicial proceedings. And, yes, it is a matter of money. A  
21 letter of credit is always a matter of money. Other collateral  
22 is a matter of money.

23 If it is posted as a provisional remedy, as I say, if  
24 the proviso isn't getting a judgment, then it is always the  
25 case that there is no irreparable harm in taking it. It is

1 said it was cumulative and the Court supported that.

2 That's the main case in support of the defense against  
3 our position.

4 THE COURT: Let's discuss that for a moment because,  
5 again, the Court is familiar with the law in this case having  
6 itself rendered numerous opinions on the question of the scope  
7 of the arbitrator's determination of what is relevant and what  
8 is cumulative.

9 I think that the standard is fairly deferential on  
10 that issue. If an arbitrator denies evidence entirely to one  
11 side it is one thing. But if it is a question of whether the  
12 arbitrator, in good faith, believes that a particular proffer  
13 of evidence is cumulative, as you know, the doctrine on that is  
14 that the Courts are not going to second-guess arbitration  
15 awards. Otherwise, the entire process would be undermined.

16 MR. HIGGINS: Yes, your Honor. And our cases and our  
17 statements on that are more prophylactic than anything else.  
18 The arbitrators here did not find that this evidence was  
19 cumulative. And in fact that would have been a very difficult  
20 thing for any arbitrator to find.

21 This was our witness in rebuttal to the witness put by  
22 the petitioners below on the issue of damages -- several  
23 aspects of damages. And I don't think -- it was our only  
24 witness and what the panel said, it is indicated in the brief,  
25 is that they were going to deny us the right to put this

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1 witness on and they were going to accept the numbers being put  
2 forth by the other side. And if they thought they needed more  
3 help after -- actually they didn't say it that way.

4 After they decided the substantive issues, they would  
5 come back to the parties. And in this case no one came back  
6 and we were prevented from putting on our only witness on  
7 really the only issue in the case which was how much we owe.

8 And so, it isn't cumulative and discretion stops  
9 somewhere. And I think that discretion has to stop well before  
10 this. We only called three witnesses. It isn't as if we  
11 dragged this thing on forever.

12 THE COURT: Isn't there some issue, Mr. Higgins, about  
13 the timeliness of the witness?

14 MR. HIGGINS: Well, two things, your Honor. There  
15 wasn't an order other than a preliminary witness list. It was  
16 never characterized as anything else. And so, we were  
17 certainly not on notice that we had any obligation to provide  
18 any other witness list, firstly.

19 Secondly, we did give notice a month before the  
20 hearing that we would be putting this witness on as a rebuttal  
21 witness. I'm not sure we actually used the word "rebuttal" but  
22 we did put in our papers a very lengthy exchange of  
23 correspondence. And I hope we don't bore the Court with all of  
24 it, but we made a very strenuous attempt to extract evidence of  
25 damages from the other side. And it only became apparent that

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1 we weren't really going to be able to get sufficient evidence  
2 of damages from the other side that we decided we had to put on  
3 a witness.

4 We never had an expectation of putting on a witness  
5 because in these cases the accounting usually works itself out.  
6 Here, it never did. The other side never put on sufficient  
7 evidence and so we were forced to put on -- well, we were  
8 forced to attempt to put on a witness to straighten the  
9 situation out.

10 One of the most critical elements of it was there was  
11 very -- well, actually no evidence of distribution of cash  
12 position and what was put in was wrong. And we would have put  
13 a witness in that would have explained that and that would have  
14 caused a very dramatic \$3 million shift in the award if it had  
15 been done properly. And we didn't have any witness on that  
16 because we were prevented from putting that in and we were  
17 prevented from putting exhibits in which would have been  
18 testified to.

19 THE COURT: All right. Thank you, Mr. Higgins. Why  
20 don't we give the defendants the floor?

21 MS. JACOBSON: Thank you, your Honor. The first thing  
22 I would like to address is the notion of the security and the  
23 issue of irreparable harm.

24 Contrary to what the petitioner's position is, the  
25 contract specifically deals with the posting of security.

1 That's annexed as Exhibit 1 to my declaration, specifically at  
2 pages 7 through 9. In that security provision Commercial Risk  
3 was supposed to post the entirety of the amounts that were  
4 shown to be owing; whatever my client told them was owing  
5 should have been posted.

6 If we turn to page 8 of the contract, that talks about  
7 when letters of credit can be drawn down. Essentially it says  
8 that if the reinsurer fails to discharge any of its payment  
9 obligations, any security that's been posted can be drawn down.  
10 It is an unconditional right to draw down security. It doesn't  
11 require going anywhere and that's what the contract does  
12 provide.

13 Now, if we turn to --

14 THE COURT: Is it your contention that that is what  
15 the arbitrator, in essence, interpreted the contract to say and  
16 ruled on?

17 MS. JACOBSON: That is our contention.

18 And, in fact, if we take a look at Exhibit number 5 to  
19 my declaration which is the actual order imposing the  
20 requirement that pre-hearing security be posted, we see in the  
21 order that the panel says that the security shall be in the  
22 form acceptable to Security Insurance Company of Hartford,  
23 i.e., a regulation 114-type security trust fund or a clean,  
24 irrevocable letter of credit, or cash.

25 And if we turn back to the security provision in the

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1 contract, at page 7 at the very first paragraph it talks about  
2 a regulation 114 trust or clean irrevocable and unconditional  
3 letter of credit. That is exactly what the panel was doing.

4 And, in fact, on the security motion we argued that this  
5 provision of the contract required the posting of security,  
6 among other things, including the disastrous financial  
7 condition of reinsurer here, Commercial Risk.

8 So, it is our absolute contention that the right to  
9 the security derives from the contract. It is unconditional  
10 and it commits us to draw down without any order of the panel.

11 Now, when the panel, however, issued its pre-hearing  
12 security order at Exhibits 5, it imposed an impediment toward  
13 the draw down. It said to us, We are going to require the  
14 posting of the pre-hearing security but you can't draw on it  
15 absent further written instructions from the panel.

16 So, that meant that we couldn't just draw down. It  
17 provided an additional impediment.

18 Now, that award was entered by the panel, it was  
19 not -- Commercial Risk didn't move to vacate it but what that  
20 award said was -- the only inference you can obtain from that  
21 order is that when the panel issues a written instruction to  
22 draw it down, it can be drawn down. There was no motion to  
23 vacated it.

24 That was the order of the panel and that is the  
25 understanding that certainly my client has vis-a-vis the whole

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1 letter of credit issue, completely derived from the contract.  
 2 Therefore, it is the contract that is self-executing.  
 3 It is not the final award.  
 4 THE COURT: A question: What is your contention with  
 5 regard to whether or not the arbitrator's requesting the  
 6 posting of pre-award security was permissible under the  
 7 contract itself?  
 8 MS. JACOBSON: Well, very clearly, if we turn to the  
 9 arbitration clause which is at page -- begins at page 15 and  
 10 goes on to 16, and that's still in Exhibit 1, it says: Any  
 11 dispute or difference between the company and any reinsurer  
 12 relating to the interpretation or performance of this contract  
 13 including its formation or validity, or any transaction under  
 14 this contract, whether arising before or after termination,  
 15 shall be subject to arbitration.  
 16 So, clearly, issues of the adequacy of letters of  
 17 credit, etc., would be subject to arbitration. And also draw  
 18 downs, if that was an issue.  
 19 And if we go down further in the arbitration clause  
 20 also on page 16 it says: The arbitrator shall have the power  
 21 to determine all procedural issues for the holding of the  
 22 arbitration, including but not limited to inspection of  
 23 documents, examination of witnesses -- importantly -- and any  
 24 matter -- other matter relating to the conduct of the  
 25 arbitration. The arbitrator shall interpret this contract as

1 fact there is such a dispute, it is one that should be brought  
 2 back to the arbitrators?  
 3 MS. JACOBSON: I don't -- I mean, if they wanted to  
 4 make an application to the arbitrators I suppose that they  
 5 could. I think the word is plain and unambiguous and permits  
 6 us to draw down.  
 7 And I might also point out Mr. Higgins spoke lengthily  
 8 about the opportunity to go into court and get a judgment and  
 9 how important that was. This arbitration clause says: The  
 10 decision, in writing, of the majority of the arbitrators shall  
 11 be final and binding upon both parties. Judgment may be  
 12 entered.  
 13 Not requiring that judgment be entered in order for  
 14 certain parties of the award to be effectuated, may be.  
 15 THE COURT: All right. Anything else?  
 16 MS. JACOBSON: If I might, I would like to discuss the  
 17 exclusion of Mr. Passis as a witness.  
 18 I think the description of Mr. Passis' exclusion  
 19 omitted certain items and was incorrect in certain regards.  
 20 First of all, Mr. Passis was not on the preliminary witness  
 21 list and did not show up until February.  
 22 Now, I think it is important to note that this  
 23 arbitration was scheduled to go forward in December and all  
 24 fact discovery had truly been ended in November. We were on  
 25 the cusp of the arbitration hearing. I think two weeks before

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1 an honorable engagement and not as merely a legal obligation.  
 2 They are relieved of all judicial formality and may abstain  
 3 from following the strict rules of law. The arbitrators may  
 4 award interest and costs.  
 5 So, it is a very permissive clause. It gives the  
 6 arbitrators expansive powers to determine the shape and the  
 7 scope of the arbitration proceeding and the procedures that are  
 8 to be followed in that proceeding.  
 9 THE COURT: Does that suggest that the issue of  
 10 whether or not the arbitrators have the authority, which  
 11 Mr. Higgins is challenging, to order some form of enforcement,  
 12 is itself an arbitration issue?  
 13 MS. JACOBSON: Yes. I mean, we believe that this is a  
 14 very expansive provision and I would like to --  
 15 THE COURT: Let me ask, was there any discussion or  
 16 attempt at any time to bring this matter to the arbitration as  
 17 an additional dispute between the parties? And by this matter  
 18 I mean the plaintiff's challenge here or contention that the  
 19 arbitrators did not have the authority to issue an enforcement  
 20 order.  
 21 MS. JACOBSON: No, Commercial Risk did not -- did not  
 22 go to the arbitration panel with that kind of complaint. In  
 23 fact, the first time we heard of any such complaint was when we  
 24 learned that there was a TRO application.  
 25 THE COURT: Well, is it your contention now that if in

1 the hearing we got word that Commercial Risk's party arbitrator  
 2 was ill so the hearing got put off.  
 3 Okay. That's the very end of November we get that  
 4 decision. Mr. Passis was not even on the radar screen and we  
 5 were supposed to go to hearing within two weeks. In fact, the  
 6 parties were already drafting their pre-hearing briefs; no  
 7 mention of Mr. Passis.  
 8 If Mr. Passis and his testimony was so material we  
 9 should have heard about him long before February.  
 10 Now, there was no realistic opportunity to depose  
 11 Mr. Passis. Mr. Passis was not a percipient witness. He  
 12 wasn't around at the time that all of the events took place.  
 13 According to Mr. Higgins at the hearing, and that's in  
 14 Exhibit 14, page 1001, Mr. Passis was going to "authenticate  
 15 certain statements that were being put in by Commercial Risk."  
 16 And specifically, when asked whether Mr. Passis'  
 17 testimony might "affect the panel's view of what damage would  
 18 be" the award -- the damages award should be, the response was  
 19 It could be. And that's on page 1005. Not definitive.  
 20 In fact the umpire asked: So that's a purely  
 21 hypothetical?  
 22 And the answer was: Yes.  
 23 That's all detailed, the transcript on Exhibit 14 to  
 24 my declaration, page 1005.  
 25 Now, despite what Mr. Higgins said, the panel actually



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1 took in Mr. Passis' damages exhibits, exhibits numbers 222 and  
2 223, and that's at Exhibit 19 of my declaration at page 1206.  
3 And they were permitted, by the panel's ruling, to  
4 cross-examine -- to call for cross-examination one of our  
5 witnesses for a second time on those very same exhibits. And  
6 they did.

7 And lastly I would like to say that it is clear that  
8 the panel must have taken into account some of what was in  
9 those exhibits because we were not -- my client was not given  
10 all of the interests that it was seeking. It got only about  
11 one third. We don't know precisely what they did but, very  
12 plainly, they didn't buy what we said lock, stock and barrel.

13 We don't believe that Commercial Risk satisfies any of  
14 the prongs for a preliminary injunction. They can't show  
15 irreparable harm. We are only talking about money here and  
16 there is, in light of the fact that it is nearly insurmountable  
17 to wage challenge to an arbitration award on a motion to  
18 vacate, they don't show the second prong either.

19 Thank you.

20 THE COURT: Thank you.

21 Mr. Higgins, do you have another response?

22 MR. HIGGINS: I have a few responses or observations.  
23 Thank you, your Honor.

24 On the point of what was being ordered, it is pretty  
25 clear that we were not putting up a letter of credit under the

1 posted by -- well, jointly the panel just called it Commercial.

2 And so, the panel wasn't -- obviously wasn't trying to  
3 enforce provisions under the contract and we don't believe  
4 that, without a hearing, we don't think that the arbitrators  
5 had the power to do that. Certainly not to order delivery of  
6 unencumbered collateral security as a provisional remedy

7 THE COURT: At any time did you challenge the  
8 arbitrator's authority to make such a requirement?

9 MR. HIGGINS: I'm sorry. I don't know what  
10 requirement your Honor is referring to.

11 THE COURT: The posting of the pre-arbitration  
12 security.

13 MR. HIGGINS: No, we did not challenge it. We put up  
14 the security. We challenged it in the first instance on motion  
15 but once we were ordered to do it, we put it up because we  
16 don't challenge the authority to, of the panel.

17 THE COURT: Could that be construed as a form of  
18 waiver?

19 MR. HIGGINS: Well, no, we don't dispute the power of  
20 panel to order provisional remedies. We think the law is  
21 fairly clear on that. But we do dispute the notion that that  
22 provisional remedy can be something other than a provisional  
23 remedy, something other than collateral security for, to  
24 securitize an eventual judgment. We certainly challenge that  
25 notion. And we would have, if they had ordered us to pay the

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1 contract, we were putting up a letter of credit because we were  
2 told to by the panel, and that the constriction or restriction  
3 on the ability to draw down, though we don't agree with it,  
4 necessarily, was not something that we fought at that point  
5 because it protected the letter of credit. We would have had  
6 to have a crystal ball to ascertain that the panel would allow  
7 the letter of credit to be paid over before judgment because  
8 that's the standard by which the Courts permit arbitrators to  
9 require provisional remedies. There are no cases which permit  
10 arbitrators to make decisions on the merits without a hearing.  
11 And this arbitration clause certainly doesn't do that; allow --

12 THE COURT: Is it your view, Mr. Higgins, that there  
13 is nothing at all in the treaties and the contract between the  
14 parties that gave authority for the posting of pre-arbitration  
15 security?

16 MR. HIGGINS: Yes. That is our position.

17 THE COURT: So you think --

18 MR. HIGGINS: There is a letter of credit requirement  
19 in the ordinary course but in this case one can't really argue  
20 that that's what the panel was doing, because there is only a  
21 requirement for, in regulatory parlance, unadmitted or  
22 non-admitted security which, admittedly, to circle around, the  
23 Bermuda company was but the Vermont company was not.

24 So, the Vermont company was not required to post  
25 security but, nevertheless, the panel required security to be

1 money over, we would have challenged it, of course. But it was  
2 in the form of letters of credit, it was delivered to counsel  
3 and not to the other party, which we insisted on, but it was  
4 done and there was the incumbents on it in terms of drawing.

5 I don't think anything has happened since that time  
6 which alters the character of the relief. And the only thing  
7 that's happened is that the panel has taken it upon themselves  
8 to not only render the award but satisfy it.

9 THE COURT: Anything else?

10 MR. HIGGINS: Well, just one minor point going back to  
11 the 'may enter.'

12 The reason it is 'may' is because there is no  
13 requirement to do it. It is just that if it can't be  
14 satisfied. Otherwise, it has to be entered and the 'may'  
15 language also refers to the fact that there are many Courts  
16 that may have jurisdiction and says it may be entered in any  
17 Court's jurisdiction.

18 So, I don't think that that has any significance in  
19 terms of statute.

20 THE COURT: All right. I thank you.

21 The Court has reviewed these papers closely when they  
22 were filed and the additional briefing that the Court received  
23 as of today. I have heard the arguments of the parties here at  
24 this proceeding. On this basis I am not persuaded that the  
25 plaintiffs have made out any of the prongs necessary to support

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1 the granting of the application. I am not persuaded that the  
2 plaintiffs have indicated that they would suffer irreparable  
3 harm here.

4 In view of what is at stake -- which is essentially a  
5 money dispute -- the money dispute is literally resolvable by  
6 the party that may win on the merits ultimately paying back  
7 what may have been improperly drawn down, if in fact the  
8 plaintiffs were to prevail on the merits.

9 I don't see where that irreparable harm comes in.  
10 Plaintiffs indicate that their view of the irreparable harm  
11 enters in the issue of what they characterize as the improper  
12 or abuse of the process. Again, I'm not persuaded that that is  
13 the case here.

14 Under the applicable doctrine, the arbitrators have a  
15 fairly extensive latitude to interpret the scope of arbitration  
16 and make appropriate rulings concerning on that scope. Those  
17 determinations ordinarily are entitled to substantial deference  
18 by the Court except as has been indicated in the cases of clear  
19 abuse of legal acts or illegal acts or other forms of  
20 impropriety.

21 I don't believe that there is sufficient evidence that  
22 the standard has been met here.

23 On those grounds, the issue of whether or not the  
24 arbitrators improperly excluded evidence, in my view, has not  
25 been compellingly demonstrated to the point warranting the

1 today.

2 Thank you.

3 MR. HIGGINS: Thank you, your Honor.

4 MS. JACOBSON: Thank you, your Honor.

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1 extraordinary remedy not only of denial of the confirmation of  
2 arbitration award but also of granting of preliminary  
3 injunctive relief.

4 I also do not believe that the plaintiffs are likely  
5 to succeed on the merits given the language of the contract  
6 that is at issue here, the parties' agreements, and I also am  
7 not persuaded that there are sufficient issues going to the  
8 merits as to make the plaintiff's claims later on for  
9 litigation and the balance of equities tilting decidedly in the  
10 plaintiff's favor because the Court believes that in the  
11 reading of the contract that there is sufficient support in the  
12 underlying agreements for the posting of the letter of credit  
13 and for the draw down of the letter of credit absent a  
14 confirmation award.

15 To the extent that there is any dispute regarding that  
16 question, that, in itself, as the Court suggested earlier, may  
17 be an arbitrable issue that should be -- that would be within  
18 the scope of the arbitration dispute and should be resolved in  
19 that forum and not in this Court.

20 So, for these essential reasons, the Court will deny  
21 the plaintiff's application. If the parties seek any further  
22 litigation in this matter, they should confer and develop a  
23 proposed case management plan setting forth the time tables for  
24 any additional pretrial proceedings, and you should submit that  
25 to the Court for review and enforcement within 10 days of

## **EXHIBIT 28**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COMMERCIAL RISK REINSURANCE  
COMPANY LIMITED and  
COMMERCIAL RISK RE-INSURANCE COMPANY,

Plaintiffs,

— against —

SECURITY INSURANCE COMPANY OF  
HARTFORD (for itself, and as  
Successor in Interest to The Fire and  
Casualty Insurance Company of  
Connecticut, The Connecticut  
Indemnity Company and Employee  
Benefits Insurance Company),

Defendant.

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 4-11-07

07 Civ. 02772 (VM)

ORDER

**VICTOR MARRERO, United States District Judge.**

Plaintiffs Commercial Risk Reinsurance Company Limited and Commercial Risk Re-Insurance Company (collectively "Commercial Risk"), moved by order to show cause on April 5, 2007 for a preliminary injunction to enjoin defendants from attempting to enforce an arbitration award which permits defendant Security Insurance Company of Hartford ("SICH") to draw down on a letter of credit posted by Commercial Risk during recent arbitration proceedings.

The Court received and reviewed the parties' papers prior to a hearing scheduled for April 9, 2007. After hearing arguments from both sides, having fully reviewed the parties' briefs and supporting papers, and giving due consideration to the arguments raised by both sides, for the reasons set forth




on the record at the hearing on that day, the Court finds that Commercial Risk has failed to satisfy any of the standards that warrant granting a preliminary injunction. Accordingly, the Court denies Commercial Risk's motion.

The parties are directed to confer and develop a proposed case management plan to submit to the Court for review and approval in connection with any further proceedings contemplated before this Court on this matter.

**SO ORDERED.**

DATED: New York, New York  
10 April 2007



Victor Marrero  
U.S.D.J.

## **EXHIBIT 29**

**From:** Lewner, Andrew S.  
**Sent:** Monday, April 09, 2007 5:34 PM  
**To:** pagentile@optonline.net  
**Cc:** haberlaw@aol.com; ccomac@comcast.net; JHiggins@damato-lynch.com; Jacobson, Michele L.; Shulman, Regan  
**Subject:** Security Insurance Company of Hartford v. Commercial Risk Reinsurance Company et al (Non-DIG Arbitration)



SSL-DOCS2-703357

85-v1-Gentile ...

Mr. Gentile,

We understand that you have been appointed as Commercial Risk's replacement arbitrator to the arbitration panel in the above captioned arbitration. Accordingly, we ask that you please complete the attached arbitrator questionnaire. In light of the impending arbitration hearing dates of June 25 - 29, 2007, we respectfully ask that you complete and return the questionnaire within one week.

Respectfully,

Andrew S. Lewner, Esq.  
Stroock & Stroock & Lavan, LLP  
Direct Dial: 212-806-5820  
Desktop Fax: 212-806-7820  
E-mail: alewner@stroock.com

_____	X
In the Matter of the Arbitration of	:
	:
SECURITY INSURANCE COMPANY OF	:
HARTFORD itself and as successor in interest to	:
THE FIRE AND CASUALTY INSURANCE	:
COMPANY OF CONNECTICUT, THE	:
CONNECTICUT INDEMNITY COMPANY, and	:
EMPLOYEE BENEFITS INSURANCE	:
COMPANY,	:
	:
Claimant,	:
- against -	:
	:
COMMERCIAL RISK REINSURANCE	:
COMPANY LIMITED (BERMUDA) and	:
COMMERCIAL RISK RE-INSURANCE	:
COMPANY (VERMONT),	:
	:
Respondents.	:
(Non-DIG Arbitration)	:
_____	X

### ARBITRATOR QUESTIONNAIRE

To assist the parties in evaluating the qualifications of persons nominated to serve as arbitrator in the arbitration between the parties listed above, and to identify any potential conflict of interest, please supply the following information.

1. Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Home Address: \_\_\_\_\_

Home Telephone: \_\_\_\_\_

2. CURRENT EMPLOYMENT (Position and Length of Employment).

Position Title: \_\_\_\_\_

Length of Employment: \_\_\_\_\_

Principal Duties: \_\_\_\_\_

PAST QUALIFYING EMPLOYMENT (if not currently an officer of an insurance or reinsurance company).

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Please attach a resume or curriculum vitae.

3. Are you presently or have you ever been an employee, officer, director, shareholder, agent or consultant of any of the parties listed below, or of such parties' subsidiaries, affiliates or parent companies.

Security Insurance Company of Hartford  
The Fire and Casualty Insurance Company of Connecticut  
The Connecticut Indemnity Company  
Employee Benefits Insurance Company  
Royal & Sun Alliance  
ARTIS Group  
The SCOR Group  
Commercial Risk Reinsurance Company Limited (Bermuda)  
Commercial Risk Re-Insurance Company (Vermont)  
NHE Group  
Occupational Risk Services ("ORS") Group  
High Powered Programs ("HPP") Group

☐ Yes ☐ No

If yes, please explain.

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4. Have you ever served as an arbitrator, umpire, attorney, or expert witness in a matter involving any of the parties listed above or any subsidiaries, affiliates or parent companies of such parties?

☐ Yes ☐ No

If yes, please explain.

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5. Have you ever had any involvement in an insurance or reinsurance transaction or dispute involving any of the parties listed above or any subsidiaries, affiliates or parent companies of such parties?

☐ Yes ☐ No

If yes, please explain.

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6. If you are currently are or have previously been affiliated with a law firm, has that law firm ever represented any of the parties listed above or any subsidiaries, affiliates or parent companies of such parties?

☐ Yes ☐ No

If yes, please explain.

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7. If you currently are or have previously been affiliated with a law firm, has that law firm to your knowledge ever represented a client which was adverse to any of the parties listed above or any subsidiaries, affiliates or parent companies of such parties in any proceeding of any kind?

☐ Yes ☐ No

If yes, please explain.

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8. To your knowledge, do any of companies with which you are presently affiliated or in which you presently have a financial interest have an ongoing business relationship with any of the parties and/or affiliates listed above?

☐ Yes ☐ No

If yes, please explain.

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9. Have you ever had any involvement in an insurance or reinsurance transaction or dispute involving any of the specific claims, policies and/or treaties at issue in this matter as listed below?

This arbitration involves whether payments made by Security Insurance Company of Hartford itself and as Successor in Interest to The Fire and Casualty Insurance Company of Connecticut, The Connecticut Indemnity Company, and Employee Benefits Insurance Company ("Claimant") for losses incurred in connection with the NHE Program, the ORS Program and the HPP Program are reimbursable to Claimant, pursuant to the terms of reinsurance agreements issued to Claimants by Commercial Risk Reinsurance Company Limited (Bermuda) and Commercial Risk Re-Insurance Company (Vermont).

☐ Yes ☐ No

If yes, please explain.

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10. Have you ever served on an arbitration panel with Martin Haber?

☐ Yes ☐ No

If yes, for each such arbitration, state the approximate date of commencement and termination (or whether still pending) and the respective capacities in which you and Martin Haber acted, i.e., as arbitrator or umpire.

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11. Have you ever served on an arbitration panel with David Thirkill?

☐ Yes ☐ No

If yes, for each such arbitration, state the approximate date of commencement and termination (or whether still pending) and the respective capacities in which you and David Thirkill acted, i.e., as arbitrator or umpire.

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12. Have you ever served as an arbitrator, umpire, expert witness or consultant in an arbitration or litigation at the request of any counsel involved in this arbitration?

D'Amato & Lynch

Stroock & Stroock & Lavan LLP

☐ Yes ☐ No

If yes, identify counsel and disclose type of service and approximate date so engaged.

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13. This arbitration involves whether payments made by Security Insurance Company of Hartford itself and as Successor in Interest to The Fire and Casualty Insurance Company of Connecticut, The Connecticut Indemnity Company, and Employee Benefits Insurance Company ("Claimant") for losses incurred in connection with the NHE Program, the ORS Program and the HPP Program are reimbursable to Claimant pursuant to the terms of reinsurance agreements issued to Claimants by Commercial Risk Reinsurance Company Limited (Bermuda) and Commercial Risk Re-Insurance Company (Vermont).



Would these facts or circumstances prevent you from rendering an unbiased decision in this arbitration?

☐ Yes ☐ No

If yes, please explain.

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14. Are you aware of any facts or circumstances which (1) might impair your ability to serve or (2) might create an appearance of partiality on your part in the above-captioned arbitration?

☐ Yes ☐ No

If yes, please explain.

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15. Are you available to serve as an arbitrator in this arbitration during the week of June 25 – June 29, 2007.

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_